

**STANDARDS PRESENTATION  
TO  
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

Attachment No. 1

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PROPOSED STATE STANDARD,  
TITLE 8, CHAPTER 3.5, SUBCHAPTER 1, ARTICLES 1 AND 2

Amend the title of Subchapter 1 as follows:

Subchapter 1. Rules of Procedure for ~~Interim and~~ Permanent Variances, and Appeals from Temporary Variances

Amend Section 403 as follows:

§ 403. Definitions.

For the purpose of these rules:

(a) "Standards Board" or "~~b~~Board" means the Occupational Safety and Health Standards Board; except that wherever the words "Standards Board" or "~~b~~Board" alone are used, the power to act may be delegated by the ~~b~~Board and whenever the words "~~b~~Board itself" are used, the power will be exercised by the ~~b~~Board acting through a quorum of its members;

\* \* \* \* \*

(n) "Employer" means (1) the State and every State agency; (2) each county, city, district and all public and quasi-public agencies therein; (3) every person, including any public service corporation which has any natural person in service;~~and~~; (4) any Conveyance Owner as defined in subsection (o); and (5) any employer who employs "affected employees" as defined by ~~Rule 403(4)~~.

(o) "Conveyance Owner" means a person or entity that has custody of a conveyance covered by the Elevator Safety Orders, or that owns property on or in which such a conveyance is to be installed.

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Sections 143 and 143.2, Labor Code.

Amend Section 404 as follows:

§ 404. Computation of Time.

In computing the time within which any act must be performed, "days" shall refer to calendar days. The first day shall be excluded and the last day shall be included. If the last day is a Saturday, Sunday or holiday, that day shall also be excluded the required act must be performed by the following Monday, or if that Monday is a holiday, by the next day that is not a holiday.

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Sections 143 and 143.2, Labor Code; and 12 and 12(a), Code of Civil Procedure.

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Amend Section 405.1(b) as follows:

§ 405.1. Authority of Hearing Officers.

\* \* \* \* \*

(b) When the Standards Board or a hearing panel hears the ~~case~~ matter, the hearing officer shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the ~~Board~~ or panel on matters of law; the ~~Board~~ or panel ~~itself~~ shall exercise all other powers relating to the conduct of the hearing but may delegate all or any of them to the hearing officer. When the hearing officer alone hears a ~~case~~ matter, the hearing officer shall exercise all powers relating to the conduct of the hearing.

\* \* \* \* \*

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Sections 143, 143.1, 143.2 and 6457, Labor Code.

Delete Section 407 as follows:

§ 407. Service and Notice.

~~(a) At the time of filing any document with the Standards Board, including letters or other writings, a copy thereof shall be served by the filing party on every other party, together with the filing of proof of service as provided for in rule 407.1.~~

~~(b) Service upon a party who has appeared through a representative shall be made upon such representative.~~

~~(c) Unless otherwise ordered service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effective at the time of mailing or personal delivery.~~

~~(d) Service and notice to employees represented by an authorized representative shall be deemed accomplished by serving the representative by postage prepaid first class mail or by personal delivery.~~

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Sections 143.1 and 143.2, Labor Code.

Delete Section 407.1 as follows:

§ 407.1. Proof of Service by Parties.

~~(a) Proof of service by parties may be made by any of the following means:~~

~~(1) Affidavit of service;~~

~~(2) Written statement endorsed upon the document served and signed by the party making the statement;~~

~~or~~

~~(3) Letter of transmittal.~~

~~(b) Where service is accomplished by the posting of a document or notice, proof of such posting shall be~~

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~~filed not later than the second working day following the posting.~~

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Sections 143.1 and 143.2, Labor Code.

Delete Section 407.2 as follows:

§ 407.2. Responsibilities of Employers to Notify Employees of Proceedings.

~~(a) In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall post a copy of the application or appeal, or a statement giving a summary of the application or appeal and specifying where a copy may be examined, at the place or places where notices to employees are usually posted. That posting shall take place immediately upon receipt of notice of the docketing of the variance application or appeal and shall be accompanied by a posted notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable time.~~

~~(b) Any authorized employee representative shall be served with the notice set forth in this rule and with a copy of the variance application or appeal.~~

~~(c) A copy of the notice of hearing shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at the place or places where notices to employees are normally posted.~~

~~(d) A copy of the notice of hearing shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in rule 407, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.~~

~~(e) Where posting is required by this rule such posting shall be maintained until the commencement of the hearing or until earlier disposition.~~

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Sections 143.1 and 143.2, Labor Code.

Delete Section 407.3 as follows:

§ 407.3. Responsibilities of Employees to Notify Employers and Others Employees of Proceedings.

~~(a) Where an employee appeal from the granting or denial of a temporary variance is filed by an affected employee or authorized employee representative, a copy of the employee appeal shall be provided to the employer for posting in the manner prescribed in rule 407.2.~~

~~(b) An authorized employee representative who files an employee appeal from the granting or a denial of a temporary variance shall be responsible for serving any other authorized employee representative whose members are affected employees.~~

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Section 6455, Labor Code.

Amend the title of Article 2 as follows:

Article 2. Applications for ~~Interim and/or~~ Permanent Variances; and Appeals from Temporary Variances

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Amend Section 411 as follows:

§ 411. Applications for Permanent Variances.

(a) Any ~~eEmployer or class of employers,~~ desiring a permanent variance from an occupational safety or health standard, regulation or order contained in California Code of Regulations, Title 8 shall file a written application for a variance, submitted under penalty of perjury, with the Standards Board.

NOTE: See Rule 403(n) for definition of Employer.

(b) ~~At~~ Six copies of the application for variance shall be submitted and shall include:

(1) The name and address of the ~~applicant~~ Employer;

(2) The address(es) ~~of the place or places of employment involved~~ where the variance will be in effect;

(3) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the ~~applicant~~ Employer to provide health and safety equal or superior to that provided by the regulations;

(4) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide ~~employment and places of employment to employees which are as safe and healthful as those required~~ health and safety equal or superior to that provided by the standard regulation from which a variance is sought;

(5) A certification that the ~~applicant has informed the employees of the application by (i) giving a copy thereof to their authorized representative; (ii) posting the application or a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted; and (iii) by other appropriate means~~ Employer will comply with the notification and posting requirements contained in Rules 411.2 and 411.3 below;

~~(6) A description of how employees have been informed of:~~

~~(A) the application;~~

~~(B) their right to full party status including the right to participate in the proceedings;~~

~~(C) the availability of all pleadings for inspection and copying at a reasonable time; and~~

~~(D) of their right to petition the Standards Board for a hearing.~~

~~(7) A specification of the standard Title 8 regulation from which the permanent variance is sought, including the appropriate safety order number subsections, if applicable; and~~

~~(8) A statement of whether or not an appeal has been filed or is pending with the Occupational Safety and Health Appeals Board relative to the same safety order, including the Occupational Safety and Health Appeals Board docket number;~~

~~(9) A statement estimating the number of witnesses to be called by the applicant Employer at the hearing and of the amount of time the applicant Employer will require to present their case at the hearing; and~~

~~(10) All Six copies of any photographs, blueprints or other illustrative materials (in triplicate) submitted to document or clarify the application.~~

NOTE: Authority cited: Section 143.2, Labor Code. Reference: Sections 143, 143.1, 143.2 and 146, Labor Code.

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Amend Section 411.2 as follows:

§ 411.2. ~~Interim Variances~~ Compliance with Notification and Posting Requirements Regarding Variance Proceedings and Temporary Variance Appeals.

The notification and posting requirements contained in Sections 411.3 and 412.2 shall be satisfied as follows:

(a) Notification to a party who has appeared through a representative shall be made through such representative. Notification to an authorized employee representative shall be in addition to providing notice to the affected employees.

(b) Unless otherwise ordered, notification may be provided by postage-prepaid first class mail or by personal delivery. Notification is deemed effective at the time of mailing or personal delivery.

(c) Proof of notification or posting by parties may be made by any of the following means:

(1) Affidavit of service;

(2) Written statement endorsed upon the document served and signed by the party making the statement;  
or

(3) Letter of transmittal.

(d) Proof of notification or posting shall be submitted to the Board no later than the second working day following the posting or notification.

NOTE: Authority cited: Sections 143.2 and 6457, Labor Code. Reference: Sections 143, 143.2 and 6457, Labor Code.

Amend Section 411.3 as follows:

§ 411.3. ~~Notice of the Granting of an Interim Variance~~ Employer Posting and Notification Responsibilities Regarding Variance Proceedings and Temporary Variance Appeals.

(a) Employers shall post a copy of the following documents at the place(s) where notices to employees are usually posted. In lieu of posting, Conveyance Owners shall immediately provide copies of these documents to the building maintenance provider and to the maintenance provider for the conveyance.

(1) The docketed variance application or temporary variance appeal, or a statement giving a summary of the application or appeal that specifies where a copy may be examined. This posting shall occur immediately upon the Employer's receipt of the notice indicating that the variance application or appeal has been docketed.

(2) A notice contained in the application, or provided as a separate document but posted simultaneously with the application, informing affected employees of their right to:

(A) party status and to participate in the variance proceedings;

(B) inspect and copy all pleadings at a reasonable time; and

(C) petition the Standards Board for a hearing.

(3) A copy of the notice of hearing, which shall be posted immediately upon its receipt.

EXCEPTION: If the variance or appeal pertains to an elevator, escalator or other conveyance covered by the Elevator Safety Orders that is in a building that is under construction or otherwise unoccupied, and neither a maintenance provider for the conveyance nor a building maintenance provider has been retained or

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designated, the Conveyance Owner shall attest to these facts in its application. If a conveyance maintenance and/or building maintenance provider is retained or designated after the variance or appeal is requested, but before a hearing is held, the Conveyance Owner shall immediately comply with this section and shall inform the Board, in writing, of the actions taken to comply.

(b) In addition to complying with subsection (a), Employers shall provide any authorized employee representative with the following documents immediately upon their receipt:

(1) a copy of the docketed variance application or temporary variance appeal;

(2) a copy of the notice set forth in (a)(2);

(3) a copy of the notice of hearing.

(c) Where posting is required, such posting shall be maintained until the commencement of the hearing or until earlier disposition of the variance request or appeal.

NOTE: Authority cited: Sections 143.2 and 6457, Labor Code. Reference: Sections 143, 143.2 and 6457, Labor Code.

Add New Section 412.2 as follows:

§ 412.2. Notification Requirements for Employees Appealing Temporary Variances.

(a) Where an affected employee or an authorized employee representative appeals the granting or denial of a temporary variance, the employee or representative shall provide the Employer with a copy of the appeal for posting in the manner prescribed in Rule 411.3.

(b) An authorized employee representative who appeals the granting or denial of a temporary variance shall be responsible for serving any other authorized employee representative whose members are affected employees.

NOTE: Authority cited: Sections 143.2 and 6457, Labor Code. Reference: Sections 143, 143.2 and 6457, Labor Code.

Amend Section 418 as follows:

§ 418. Pre-hearing ~~Motions~~ Requests for Action.

All requests for action by the Standards Board relating to any proceeding pending before the ~~h~~Board shall be ~~by motion~~ made in writing and directed to the hearing officer assigned to the ~~case~~ matter, or to the ~~board~~ executive officer if a hearing officer has not been assigned. ~~Nonsubstantive matters directed to the board may be handled by the executive officer of the board. The caption of e~~Each motion written request shall contain the ~~title and~~ variance docket number of the ~~case~~ and shall indicate the type of relief sought. If a hearing officer has been assigned, the hearing officer may resolve such requests without the Board's involvement.

Note: Authority cited: Section 143.2, Labor Code. Reference: Sections 143 and 143.2, Labor Code.

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Amend Section 420(a) as follows:

§ 420. Pre-hearing Conference.

(a) At any time before a hearing, the Standards Board or the hearing officer may, on ~~their~~ its own ~~motion or on motion~~ initiative, or at the request of a party, ~~may~~ direct the parties or their representatives to exchange information or to participate in a pre-hearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings. If a hearing officer has been assigned, the hearing officer may resolve such requests without the Board's involvement.

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NOTE: Authority cited: Section 143.2, Labor Code. Reference: Sections 143 and 143.2, Labor Code.